



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

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DECISION OF THE BOARD

Mailed and Filed: JUNE 06, 2022

IN THE MATTER OF:

Appeal Board No. 621517

PRESENT: JUNE F. O'NEILL, MEMBER

The Department of Labor issued the initial determination holding the claimant eligible to receive benefits. The employer requested a hearing and objected contending that the remuneration paid to the claimant by the City of New York prior to August 3, 2020 cannot be used to establish a valid original claim because the claimant lost that employment through misconduct in connection therewith.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances by the claimant and on behalf of the employer. By decision filed February 7, 2022 (), the Administrative Law Judge overruled the employer's objection and sustained the initial determination.

The employer appealed the Judge's decision to the Appeal Board.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant was employed from September 4, 2019, to October 11, 2019, as a trainee for the New York City Department of Parks and Recreation Department (Parks). It was a six-month program. The claimant's job duties included cleaning buildings and facilities in the city parks. The Parks' policy stated that when an employee was going to be absent, the employee must call the Parks automated call-out system. If the employee failed to call s/he would be considered "AWOL". Parks allowed six excused absences or three AWOL's during the six-month program. Exceeding the allowance would be

grounds for termination. The claimant received and read the entire Parks policy.

During the first week of her employment, the claimant was AWOL on September 7 and September 8, 2019. The claimant's supervisor warned her that continued absences would lead to termination, and if she was going to continue to be absent, she should resign to preserve future re-employment. The claimant did not resign. The claimant was AWOL for a total of five times prior to October 9, 2019.

On October 9, 2019, the claimant was absent without calling the employer. On October 11, 2019, the employer discharged the claimant because the claimant was absent without notice on October 9, 2019.

OPINION: The credible evidence establishes that the employer discharged the claimant because the claimant was absent without notice on October 9, 2019. The claimant knew or should have known that her actions would jeopardize her employment. The claimant admitted that she received and read the employer's policy regarding absenteeism and notification. Further, her supervisor had warned her that her continued absenteeism would lead to her termination early on in her employment. We find that the supervisor's testimony regarding the warning, and the claimant's lack of notice of the final absence, to be more credible than the claimant's denials of warnings and her claim of making a call on October 9, 2019. We note that the claimant was evasive and contradictory when questioned by the judge. She admitted that she read the Parks policy, that she knew she had to call the automated system, but then that she did not have to let anyone know of her absences or say anything when she called the system. And then when asked as to the content of the message on the automated system the claimant offers non-responsive answers. Accordingly, we conclude that the claimant was separated from her employment due to disqualifying misconduct, and that the wages earned with this employer are cancelled and cannot be used for her claim.

DECISION: The decision of the Administrative Law Judge is reversed.

The employer's objection, that the claimant should be disqualified from receiving benefits because the claimant lost employment through misconduct in connection with that employment and that wages paid to the claimant by such employer should not count in determining whether the claimant files a valid original claim in the future, is sustained, effective October 11, 2019.

The initial determination, holding the claimant eligible to receive benefits, is overruled.

The claimant is disqualified from receiving benefits, effective October 11, 2019, until the claimant has subsequently worked in employment and earned remuneration at least equal to 5 times the claimant's weekly benefit rate for all claims filed on or before January 1, 2014, or until the claimant has subsequently worked in employment and earned remuneration at least equal to 10 times the claimant's weekly benefit rate for all claims filed after January 1, 2014. Employment and earnings from non-covered, excluded or self-employment will not count.

The claimant is denied benefits with respect to the issues decided herein.

JUNE F. O'NEILL, MEMBER